morals, or comfort. *People* v .*Gillson,* 109 N. Y. 389; *Colon* v. *Lisk,* 153 N. Y. 188; *People* v. *Hawkins,* 157 N. Y. 1; *People* v. *O. C. Road Con. Co.,* 175 N. Y. 84.

Innumerable examples might be given. The vital question always is, Is it a reasonable exercise of the power? In the principal case, the question is, Is the act a reasonable regulation of the status of employment? The New York Court holds it is not, because it creates a liability when the party has omitted no legal duty, and has committed no wrong, and because it is not a reasonable exercise of the police power in order to secure general comfort, health, and prosperity of the state. The court refused to allow the Supreme Court decision in the Noble Bank case to determine their interpretation of their own constitution, even though it clearly requires bankers to give over property without having done wrong or omitted a legal duty. It would seem that the United States Supreme Court would have sustained the act.

It has been suggested that there is no difference between the abrogation of the fellow-servant doctrine and the liability of the employer for an accident which is due to the risk inherent to the trade, for where the employer has used all possible care in selecting and supervising his servant, the negligence of that servant resulting in an injury to another servant, is, as far as the employer is concerned, as much an accident as any other accident resulting from imperfections in his machinery or plant which the employer can by no possible care avoid. Conceding that the legislature may abrogate the defense both of common employment and of contributory negligence, it is an inconsistency to hold that the legislature cannot create the liability which was proposed to be created by the act. W W. M.

MUST A PASSENGER GO ON THE SAME TRAIN WITH HIS BAGGAGE?—Does a carrier assume the liability of an insurer with the excepted risks, as to baggage which a passenger checks but does not intend to accompany on the same train? The older authorities are to the effect that it does not. The contrary view is taken by a recent New Jersey case, the facts of which are briefly as follows:

P. bought a ticket between two points on D.'s line about noon on a certain day and checked at once her suit case containing personal apparel. However, she did not commence her journey until that evening and her baggage preceded her on another train. The suit case disappeared and she sued for its value. The railroad company defends upon the ground that the plaintiff did not accompany her baggage on the same train. *Held,* the liability of a railway company as a carrier of baggage is not affected by the fact of the passenger going on a later train than that carrying the baggage. *Larned* v. *Central R. Co.* (1911), — N. J. L. —, 79 Atl. 289.

In deciding the above case, the court said: "We are unable to accede to the view that, because the plaintiff did not accompany her baggage, the relation was not originally that of carrier and passenger, so to charge the company as a carrier of baggage. It is true that many of the older authorities so hold, but the methods of railroad companies in the transportation of

baggage, have changed greatly of recent years, even to the extent of running trains exclusively for baggage; and it is notorious in many cases, especially at certain seasons, that the passenger has no assurance whatever that his baggage will go on the same train with him, even when checked in due season for that purpose."

The authorities are not very numerous upon this particular question. The writer has been able to find one only other case that has adopted the view of the principal case. *McKibbin* v. *Wisconsin, etc., Ry. Co.,* 100 Minn. 270, 110 N. W. 964, 8 L. R. A. (N. S.) 489, decided in 1907. In that case the court said: "The defendant's contention is that the passenger must go on the same train with his baggage; otherwise, the carrier is only a gratuitous bailee of the baggage. The claim has the support of some respectable authorities. * * * In view of the modern methods of checking baggage and the custom of regularly checking it on the presentation of a ticket at stations, general ticket offices and the homes of passengers, we are of the opinion that there is now no good reason for the rule claimed, if ever there was, and hold that a railway carrier is not, as a matter of law, liable only as a gratuitous bailee of baggage which it has regularly checked if the passenger does not go on the same train with it."

It seems to be the general consensus of opinion that the carriage of baggage is incident to the carriage of the passenger in that the same consideration that supports the contract of carriage is sufficient to support the former. *Isaacson* v. *N. Y. Cent., etc., R. Co.,* 94 N. Y. 278, 46 Am. Rep. 142; *Miss. Cent. R. Co.* v. *Kennedy,* 41 Miss. 671; *Smith* v. *Boston, etc., R. Co.,* 44 N. H. 325.

The older holdings are to the effect that when a passenger checks his baggage after purchasing a ticket, it is implied under the contract that he will accompany the baggage on the same train. *Wilson* v. *Grand Trunk Ry. Co.,* 56 Me. 60, 96 Am. Dec. 435; *Wood* v. *Maine Central R. Co.,* 98 Me. 98 99 Am. St. Rep. 339; *Marshall* v. *Pontiac, etc., Ry. Co.,* 126 Mich. 45, 55 L. R. A. 650; HUTCHINSON, CARRIER Ed. 3, § 1275. The exceptions to this rule are that if the carrier agrees to carry the baggage by a later train or does it for its own convenience or through its own fault, its liability is the same as though the passenger and his baggage went together. *Toledo, etc., R. Co.* v. *Tapp.,* 6 Ind. App. 304; *Warner* v. *Burlington, etc., R. Co., 22* Iowa 166, 92 Am. Dec. 389.

Under the older rulings, the quaere arises as to what liability the carrier assumes. In *Marshall* v. *Railroad,* supra, in which P. had purchased a ticket for the sole purpose of checking his baggage and had intended and did go to his destination in a private conveyance, and did not use the ticket until four months later, the carrier was held bound only as a gratuitous bailee and only liable for gross negligence. The court qualifies its ruling here by way of dictum, as follows: "We must not be understood as holding that it is absolutely necessary for the passenger to go upon the same train with his baggage in order to entitle him to have his baggage taken care of at his destination by the railroad company as a warehouseman. Where the passenger purchased his ticket with the bona fide intention to use it, but without fault

upon his part, did not accompany it, but went upon a following train, a different case is presented." *Wood* v. *The Railroad Co.*, supra, to the same effect. These two cases were decided on the ground that since the carrier had no knowledge that the baggage was unaccompanied by the passenger, there was no compensation or consideration when it was carried alone upon which to base the extraordinary liability.

In the event that there has been no concealment of the fact of the passenger taking a different train from that carrying the baggage and the carrier through its agents had knowledge of the fact, the law will imply an obligation on the part of the passenger owning the baggage to pay the freight rate that would be due for carrying it as such, and a lien on the goods as security for its payment, and the carrier will be held liable as a common carrier of merchandise. *The Elvira Harbeck*, 2 Blatchf. 336; *Wilson* v. *Grand Trunk, etc., Ry. Co.*, 57 Me. 138, 2 Am. Rep. 26.

It seems to be held generally that in case the passenger gives the carrier's agent sufficient time, it is the duty of the railroad company to ship the baggage on the same train with the passenger, and it will be liable for the loss or destruction of the baggage, in case it does not do so. *Toledo, etc., R. Co.* v. *Tapp*, supra; *Wald* v. *Pittsburg, etc., R. Co.*, 162 Ill. 545, 53 Am. St. Rep. 332; *Coward* v. *East Tenn., etc., Ry. Co.*, 16 Lea 225, 57 Am. Rep. 226. To the effect that the baggage need not necessarily be shipped on the same train but in a reasonable time, see *St. Louis, etc., Ry. Co.* v. *Ray*, 13 Tex. Civ. App. 628.

However, it would seem that regardless of whether the carrier had or did not have knowledge of the fact that the passenger was not going on the same train with his baggage, under the modern methods of handling the transients' belongings, whereby the railroad companies exercise absolute supervision over them, and the passenger does not know where or how his baggage is being transported until he arrives at his destination, the holding in the principal case is undoubtedly the better doctrine. As was stated in an extensive note in 55 L. R. A. 650, to the case of *Marshall* v. *The Railroad*, supra, and which note was cited with approval in *McKibbin* v. *Wisconsin, etc., Ry. Co.*, supra, the passenger cannot be of any protection to the baggage by being present on the same train with it since he does not exercise any control over it, and hence can be of no value or benefit to the carrier by being there. There seems to be no reason under modern conditions for not holding the carrier liable as an insurer whether the passenger is on the same train with his baggage or not. It is certainly just to the passenger and there seems to be nothing unjust to the carrier in so holding. H. S. McC.

IMPLIED RESERVATION OF EASEMENTS.—On the severance of two tenements, what rights pass with the granted premises, in addition to those expressly granted, and what burdens upon the part granted remain in favor of the ungranted portion, in addition to the words of the express grant?

The earlier cases dealing with the subject of implied grants and implied reservations, both in England and in the United States, were liberal in allow-